

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MASSACHUSETTS
EASTERN DIVISION

In re:

VERTEX FAB & DESIGN, LLC,

Debtor.

DONALD R. LASSMAN, CHAPTER 7
TRUSTEE VERTEX FAB & DESIGN, LLC,

Plaintiff,

v.

VERTEX RAILCAR CORPORATION, VERTEX
RAIL TECHNOLOGIES, LLC. and DONALD G.
CROTEAU,

Defendant.

CHAPTER 7
CASE NO. 15-11803-JNF

ADVERSARY PROCEEDING
CASE NO. 16-01141-JNF

Jury Trial Demand

ANSWER OF VERTEX RAIL TECHNOLOGIES, LLC

Vertex Rail Technologies, LLC (“VRT”) makes the following answer to the Adversary Complaint of Donald R. Lassman, Chapter 7 Trustee Vertex Fab & Design, LLC (the “Trustee”) against Vertex Railcar Corporation (“VRC”), Vertex Rail Technologies, LLC. (“VRT”), and Donald G. Croteau (“Mr. Croteau”):

INTRODUCTION

This section of the Complaint purports to be a description of the litigation, and requires no response. To the extent that this section of the Complaint was intended to state allegations to which a response may be required, VRT denies those allegations, denies any liability to the Trustee, and denies that the Trustee is entitled to any relief from or against VRT.

JURISDICTION, VENUE, AND STANDING

1-3. VRT admits that the Trustee has standing and that this Court has jurisdiction and venue.

PARTIES

4-7. VRT admits the allegations in paragraphs 4 through 7.

FACTUAL ALLEGATIONS

8-12. VRT admits the allegations in paragraphs 8 through 12.

13. VRT states that Mr. Croteau explored additional business opportunities for Vertex Fab, and otherwise denies the allegations in paragraph 13.

14. VRT states that some Vertex Fab employees were assigned to work on railcar design, and otherwise denies the allegations in paragraph 14.

15. VRT states that Shane Wiswell and Gregg Tavares worked on railcar design, and otherwise denies the allegations in paragraph 15.

16. VRT states that in 2013 Vertex Fab employees worked on railcar design, and otherwise denies the allegations in paragraph 16.

17. VRT states that in 2013 Vertex Fab employed Daniel Bigda (“Mr. Bigda”) who had experience with railcars, and otherwise denies the allegations in paragraph 17.

18. VRT states that Vertex Fab received a proposal from Boxcar Services. VRT states that Vertex Fab employed Mr. Bigda. VRT otherwise denies the allegations in paragraph 18.

19. VRT states that Mr. Bidga was employed by Vertex Fab, and otherwise denies the allegations in paragraph 19.

20. VRT states that Vertex Fab sent the email attached to the Complaint as Exhibit 2, and otherwise denies the allegations in paragraph 20.

21. VRT states that Scott Bauer (“Mr. Bauer”) as part of his duties for Vertex Fab worked on opportunities for the sale of railcars, and otherwise denies the allegations in paragraph 21.

22. VRT states that employees of Vertex Fab interacted with the Association of American Railroads as part of working for Vertex Fab on railcar design, and otherwise denies the allegations in paragraph 22.

23. VRT states that Vertex Fab sent the email attached to the Complaint as Exhibit 3, and otherwise denies the allegations in paragraph 23.

24. VRT states that Tucker & Meltzer prepared the draft report (“the Draft Report”) attached to the Complaint as Exhibit 4, and otherwise denies the allegations in paragraph 24.

25. VRT states that the figure of 4,750 hours appears in the Draft Report but is uncertain as to the origin of the figure, and otherwise denies the allegations in paragraph 25.

26. VRT states that Vertex Fab employees performed substantially all of the work on the drawings, and that Vertex Fab was compensated for that work. VRT otherwise denies the allegations in paragraph 26.

27. VRT states that those calculations appear in the Draft Report, and otherwise denies the allegations in paragraph 27.

28. VRT states that those calculations appear in the Draft Report, and otherwise denies the allegations in paragraph 28.

29. VRT states that this conclusion appears in the Draft Report, and otherwise denies the allegations in paragraph 29.

30. VRT states that Mr. Croteau sent the email attached to the Complaint as Exhibit 5, and otherwise denies the allegations in paragraph 30.

31. VRT admits the allegations in paragraph 31.
32. VRT admits the allegations in paragraph 32.
33. VRT states that Vertex Fab continued to operate after the formation of VRT, and otherwise denies the allegations in paragraph 33.
34. VRT states that Vertex Fab employees at Vertex Fab worked on railcar design after July 2014, and otherwise denies the allegations in paragraph 34.
35. VRT states that Vertex Fab employees used Vertex Fab email addresses, and otherwise denies the allegations in paragraph 35.
36. VRT admits the allegations of paragraph 36.
37. VRT admits the allegations of paragraph 37.
38. VRT states that Exhibit 6 speaks for itself.
39. VRT states that Exhibit 6 speaks for itself.
40. VRT admits the allegation in paragraph 40.
41. VRT admits the allegations in paragraph 41.
42. VRT admits the allegations in paragraph 42.
43. VRT admits that the stated purchase price was less than the estimated valuation stated in the Draft Report, and otherwise denies the allegations in paragraph 43.
44. VRT admits the allegations in paragraph 44.
45. VRT admits the allegations in paragraph 45.
46. VRT admits the allegations in paragraph 46.
47. VRT states that Exhibit 7 speaks for itself.
48. VRT states that Exhibit 8 speaks for itself.
49. VRT admits the allegations in paragraph 49.

50. VRT states that Mr. Croteau from time to time used a Vertex Fab email address after April 2014, and otherwise denies the allegations of paragraph 50.

51. VRT states that Mr. Croteau was seeking an investment that would provide sufficient funds to satisfy the liabilities of Vertex Fab, and otherwise denies the allegations of paragraph 51.

52. VRT states that Exhibit 9 speaks for itself.

53. VRT states that Exhibit 9 speaks for itself.

54. VRT states that Mr. Croteau communicated with representatives of CSR in 2014, but is uncertain when those communications became negotiations.

55. VRT admits the allegations in paragraph 55.

56. VRT admits the allegations in paragraph 56.

57. VRT states that Exhibit 10 speaks for itself, and notes that Exhibit 10 is in unsigned draft.

58. VRT states that Exhibit 11 speaks for itself.

59. VRT denies the allegations in paragraph 59.

60. VRT states that CSR received a stake in VRC, and that CSR contributed engineering personnel and technical manufacturing know how. VRT otherwise denies the allegations in paragraph 60.

61. VRT admits that Majestic Legend Holdings Limited received an ownership interest in VRC, and otherwise denies the allegations in paragraph 61.

62. VRT lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 62.

63. VRT denies the allegations in paragraph 63.

64. VRT denies the allegations in paragraph 64.
65. VRT states that Exhibits 9 and 13 speak for themselves.
66. VRT admits the allegations in paragraph 66.
67. VRT lacks knowledge or information sufficient to form a belief as to the trust of the allegations in paragraph 67.
68. VRT states that Exhibit 13 speaks for itself.
69. VRT states that Exhibit 13 speaks for itself.
70. VRT states that Exhibit 13 speaks for itself.
71. VRT states that Exhibit 13 speaks for itself.
72. VRT states that Exhibit 13 speaks for itself, and otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 72.
73. VRT states that at various points in discussions, Mr. Croteau sought sufficient investment to satisfy all Vertex Fab liabilities.
74. VRT lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 74.
75. VRT states that Exhibit 14 speaks for itself.
76. VRT states that Exhibit 14 speaks for itself.
77. VRT states that Vertex Fab was in arrears in some obligations in late 2013.
78. VRT admits the allegations in paragraph 78.
79. VRT admits that there were communications with Recovery Capital concerning payment, and that Recovery Capital filed suit against Vertex Fab in late 2014, and otherwise denies the allegations in paragraph 79.
80. VRT admits the allegations in paragraph 80.

81. VRT admits that Vertex Fab was in arrears on various obligations during 2014 and early 2015, and otherwise denies the allegations in paragraph 81.

82. VRT denies the allegations in paragraph 82.

83. VRT denies the allegations in paragraph 83.

84. VRT states that Exhibit 15 speaks for itself.

85. VRT states that Exhibit 16 speaks for itself.

86. VRT states that Exhibit 17 speaks for itself.

87. VRT states that Mr. Croteau was negotiating with CSR in late 2014, and otherwise denies the allegations in paragraph 87.

88. VRT states that Exhibit 18 speaks for itself.

89. VRT denies the allegations in paragraph 89.

90. VRT denies the allegations in paragraph 90.

91. VRT denies the allegations in paragraph 91.

92. VRT denies the allegations in paragraph 92.

COUNT I

93. VRT repeats and incorporates by reference its responses to the allegations of paragraphs 1 through 92.

94. VRT denies the allegations in paragraph 94.

95. VRT denies the allegations in paragraph 95.

96. To the extent that paragraph 96 is intended to state allegations, VRT denies the allegations in paragraph 96.

97. VRT denies that there was any fraudulent transfer, but admits that the sale of the drawings occurred less than four years prior to the Petition Date.

98. VRT denies the allegations in paragraph 98.

99. VRT denies the allegations in paragraph 99.

100. VRT denies the allegations in paragraph 100.

101. VRT denies that there was any fraudulent transfer, but admits that the transfer was to an entity controlled by an insider of Vertex Fab.

102. VRT denies that there was any fraudulent transfer, but admits that Mr. Croteau controlled VRT.

103. VRT denies that there was any fraudulent transfer, but admits that Vertex Lab had various unpaid vendors and suppliers.

104. VRT denies the allegations in paragraph 104.

105. VRT denies the allegations in paragraph 105.

106. VRT denies the allegations in paragraph 106.

107. VRT denies that there was any fraudulent transfer, but admits that Vertex Lab had various unpaid vendors and suppliers.

108. VRT denies the allegations in paragraph 108.

COUNT II

109-117. VRT states that the allegations in paragraphs 109 through 117 appear to be directed against VRC, and that no answer is required by VRT.

COUNT III

118. VRT repeats and incorporated by reference its responses to the allegations in VRC incorporates its answers to the allegations in paragraphs 1 through 117.

119. VRT denies the allegations in paragraph 119.

120. VRT denies the allegations in paragraph 120.

121. VRT denies the allegations in paragraph 121.

122. VRT denies that there was any fraudulent transfer, but admits that Vertex Lab had various unpaid creditors as of the Petition Date.

123. VRT denies the allegations in paragraph 123.

COUNT IV

124-129. VRT states that the allegations in paragraphs 124 through 129 appear to be directed against VRC, and that no answer is required from VRT.

COUNT V

130. VRT repeats and incorporates by reference its responses to the allegations in paragraphs 1 through 129.

131. VRT denies that there was any fraudulent transfer, but admits that the sale of drawings occurred within two years prior to the Petition Date.

132. VRT denies the allegations in paragraph 132.

133. VRT denies the allegations in paragraph 133.

134. VRT denies the allegations in paragraph 134.

135. VRT denies the allegations in paragraph 135.

136. VRT denies the allegations in paragraph 136.

137. VRT denies the allegations in paragraph 137.

COUNT VI

138-145. VRT states that the allegations in paragraphs 138 through 145 appear to be directed against VRC, and that no answer is required from VRT.

COUNT VII

146. VRT repeats and incorporates by reference its responses to the allegations in paragraphs 1 through 145.

146. VRT denies that there was any fraudulent transfer, but admits that it purchased the drawings.

147. VRT denies the allegations in paragraph 147.

COUNT VIII

149-159. VRT states that the allegations in paragraphs 149 through 159 appear to be directed against VRC, and that no answer is required from VRT.

COUNT IX

160. VRT repeats and incorporates by reference its answers to paragraphs 1 through 159 of the Complaint as if fully set forth herein.

161. VRT denies that there was any fraudulent transfer, but admits that it purchased the drawings.

162. VRT denies the allegations in paragraph 162.

COUNT X

163-172. VRT states that the allegations in paragraphs 163 through 172 appear to be directed against VRC and that no answer by VRT is required.

COUNT XI

173. VRT repeats and incorporates by reference its responses to the allegations in paragraphs 1 through 172.

174. VRT denies that there was any fraudulent transfer, but admits that it purchased the drawings.

175. VRT denies the allegations in paragraph 175.

COUNT XII

176-186. VRT states that the allegations in paragraphs 176 through 186 appear to be directed against VRC, and that no answer is required from VRT.

COUNT XIII

187. VRT repeats and incorporates by reference its responses to paragraphs 1 through 186.

188. VRT denies the allegations in paragraph 188.

189. VRT states that Exhibits 9 and 14 speak for themselves.

190. VRT denies the allegations in paragraph 190.

COUNT XIV

191. VRT repeats and incorporates by reference its responses to the allegations in paragraphs 1 through 190.

192. VRT denies the allegations in paragraph 192.

193. VRT denies the allegations in paragraph 193.

194. VRT denies the allegations in paragraph 194.

195. VRT denies that there was any fraudulent transfer, but states that Mr. Croteau controlled both Vertex Fab and VRT.

196. VRT denies the allegations in paragraph 196.

197. VRT denies the allegations in paragraph 197.

198. VRT denies the allegations in paragraph 198.

COUNT XV

199. VRT repeats and incorporates by reference its responses to the allegations in paragraphs 1 through 198.

200. VRT denies the allegations in paragraph 200.

201. VRT states that it purchased the drawings, and otherwise denies the allegations in paragraph 201.

202. VRT denies the allegations in paragraph 202.

203. VRT denies the allegations in paragraph 203.

204. VRT states that Mr. Croteau managed both Vertex Fab and VRT, and otherwise denies the allegations in paragraph 204.

205. VRT states that Mr. Croteau controlled both Vertex Fab and VRT, and otherwise denies the allegations in paragraph 205.

206. VRT denies the allegations in paragraph 206.

207. VRT denies the allegations in paragraph 207.

208. VRT denies the allegations in paragraph 208.

COUNT XVI

209. VRT repeats and incorporates by reference its responses to the allegations in paragraphs 1 through 208.

210. VRT states that VRT purchased the drawings, and otherwise denies the allegations in paragraph 210.

211. VRT denies the allegations in paragraph 211.

212. VRT admits that Mr. Croteau was aware of the debts and obligations of Vertex Fab, and states that the operating income of Vertex Fab was applied against those debts and obligations. VRT otherwise denies the allegations in paragraph 212.

213. VRT admits that Vertex Fab filed for bankruptcy, and otherwise denies the allegations in paragraph 213.

214. VRT denies the allegations in paragraph 214.

COUNT XVII

215. VRT repeats and incorporates by reference its responses to the allegations in paragraphs 1 through 214.

216. VRT admits that there is an actual controversy with the Trustee.

217. VRT admits that the Trustee made a demand, and that VRT has not made a payment to the Trustee.

218. VRT admits the allegations in paragraph 218.

219. VRT admits that the Trustee is seeking a declaration.

COUNT XVIII

220-230. VRT states that the allegations in paragraphs 220 through 230 appear to be directed against Mr. Croteau, and that no answer by VRT is required.

COUNT XIX

231-241. VRT states that the allegations in paragraphs 231through 241 appear to be directed against Mr. Croteau, and that no answer by VRT is required.

TRUSTEE'S REQUEST FOR RELIEF

VRT denies that the Trustee is entitled to any of the relief against VRT requested by the Trustee in the “WHEREFORE” paragraph or otherwise in the Complaint, or to any other or further relief against VRC.

Except as expressly set forth herein, VRT denies all allegations as to VRT included in the Complaint.

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim for which relief can be granted against VRT.

SECOND AFFIRMATIVE DEFENSE

The Trustee is barred from recovery against VRT because VRT is a good faith transferee who gave value and without knowledge of the avoidability of any transfer within the meaning of Section 550(b) of the Bankruptcy Code.

THIRD AFFIRMATIVE DEFENSE

The Trustee's claims are barred against VRC because even if the Trustee has suffered damages, those damages were not caused by the acts of VRT.

FOURTH AFFIRMATIVE DEFENSE

The Trustee's claims against VRT are barred because VRT took in good faith and for reasonably equivalent value as provided in the applicable fraudulent transfer statutes.

FIFTH AFFIRMATIVE DEFENSE

The Trustee's claims against VRT are barred because reasonably equivalent value was given for any transfers within the applicable fraudulent transfer statutes.

SIXTH AFFIRMATIVE DEFENSE

If VRT has any liability (which VRT specifically denies), any recovery by the Trustee is subject to VRT's right of setoff and/or recoupment.

SEVENTH DEFENSE

If VRT has any liability (which VRT specifically denies), the Trustee is entitled to only a single satisfaction.

RESERVATION OF RIGHTS AND DEFENSES

VRT reserves the right to assert any additional defenses in this matter that may be disclosed during the course of additional investigation and discovery.

WHEREFORE, VRT respectfully requests that the Court enter an Order:

- (a) dismissing the Complaint with prejudice;
- (b) entering judgment in favor of VRT and against the Trustee on all counts of the Complaint stated against VRT;
- (c) entering judgment on Count XVII declaring that VRT is not liable to the

Trustee;

- (d) awarding VRT its reasonable attorneys' fees and costs to the extent allowed by applicable law; and
- (e) granting such other relief as is just and proper.

Vertex Rail Technologies, LLC
By its attorneys.

/s/ John O. Mirick

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Dated: October 19, 2016

Jury Demand

VRT demands a trial by jury on all issues that are triable before a jury.

CERTIFICATE OF SERVICE

I, John O. Mirick, hereby certify that this document(s), filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on October 19, 2016.

/s/ John O. Mirick

John O. Mirick, Esq.